IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9115 of 2002

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHARDA ASSOCIATION FOR THE MENTALLY RETARDED

Versus

RASULBHAI BHAIJIBHAI QURESHI

Appearance:

MR DIPAK R DAVE for Petitioner

MR MA BUKHARI for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/07/2004

ORAL JUDGEMENT

1.0 The petitioner in this petition challenged the order dated 1.11.2001 passed by the Labour Court, Ahmedabad, in Recovery Application No.1749/96, whereby the Labour Court has directed the petitioner petitioner to pay a sum of Rs.2,16,327/- and costs of Rs.1000/- to the respondent workman.

2.1 The petitioner is a public charitable trust constituted for the purpose of mentally retarded persons. The petitioner started constructing one building for mentally retarded persons in the year 1981. At that point of time the Contractor had employed the respondent. Due to various problems the building was not fully constructed. In the open plot a building was situated and the respondent was watching the properties. Thereafter the Contractor retrenched all the workers along with the respondent. The respondent made repeated requests to the petitioner to allow him to stay there as he has no other shelter. Therefore the petitioner allowed him to stay in the house without taking any rent. The respondent was serving elsewhere and was coming there only for sleeping at night. Thereafter at the request of the respondent a lumpsum amount of Rs.500/- was being given to him on humanitarian ground. According to the petitioner there was no master and servant relation between the petitioner and the servant.

2.2 After about 16 years the respondent filed Recovery Application No.1749/96 before the Labour Court, Ahmedabad claiming overtime for five years, casual leave allowance, etc., totalling to a sum of Rs.2,16,327/- from the petitioner. The Labour Court vide order dated 1.11.2001 directed the petitioner to pay Rs.2,16,327/- along with costs of Rs.1000/-. It is against the said decision the petitioner has preferred the present petition.

3.0 Mr. Dave for the petitioner submitted that the petitioner had raised a preliminary objection before the Labour Court pointing out that the workman is not an employee of the Association and there is no relationship of master and servant and therefore the application is required to be rejected. He submitted that the Labour Court without deciding the said preliminary issue and the contensions raised by the petitioner allowed the application and therefore has exceeded in its jurisdiction.

4.0 Mr. Dave has relied upon a decision of this Court in the case of Milan Cinema and Anr. Vs. Maganlal Nathalal Mistry, reported in 1999 Labour Law Journal page 220, wherein it is held that proceeding under section 33-C(2) is in the nature of execution proceedings where right to receive money or benefit is already determined or admitted and the question is only to the quantum of money or benefit which is to reach the recipient. The question as to entitlement is beyond the scope of enquiry

under Section 33-C(2). The Labour Court has therefore no jurisdiction to entertain application under Section 33-C(2) and embark upon an enquiry once issue clearly before it was about entitlement of the claimant to any right. In the present case when the petitioner has disputed the relationship of master and servant, the Labour Court has committed a serious error in entertaining the application. The right to receive money or benefit is not determined or admitted and therefore the question as to entitlement is beyond the scope of enquiry under Section 33-C(2).

4.1 Mr. Dave has relied upon a decision of this Court in the case of Naranji Peraji Trans. Co. Vs. R.B. Waghela, reported in 1998(2) GLR 984, wherein it is specifically held that the Labour Court could not have entertained the application since it involved task of adjudicating whether workman actually worked on Sundays and whether he was entitled to the other claims. In the present case also there was no adjudication as to the entitlement of the workman in respect of certain leave and other benefits as claimed by him. In absence of such prior adjudication the Labour Court should not have entertained the application of the petitioner which is contrary to law.

4.2 Mr. Dave next relied upon a decision of this Court in the case of Gujarat Water Supply and Sewerage Board Vs. Ketanbhai Dinkarray Pandya, reported in 2003(3) GLR 2281. In that decision this Court held that recovery application to the Labour Court claiming overtime without the same being adjudicated by the authority under the Minimum Wages Act, is not directly maintainable under section 33C(2) of the Act. Therefore the order of the labour court was set aside.

5.0 In the present case the claim is in respect of overtime, casual leave, festival leave, sick leave, weekly leave and bonus. The competent authority viz. the Payment of Wages Authority or any other authority has not decided the issue and the respondent workman has straightaway approached the Labour Court under section 33-C(2) of the Act. However, in view of the law laid down by this Court in the aforesaid decisions, the Labour Court ought not to have entertained such application in absence of any prior adjudication. Therefore the impugned order was passed without jurisdiction which is required to be quashed and set aside.

6.0 In the result, the petition is allowed. The order dated 1.11.2001 passed by the Labour Court,

Ahmedabad, in Recovery Application No.1749/96 is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. It is open for the respondent workman to approach the appropriate authority raising his claim.

[K.S. JHAVERI, J.]

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